IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 399 OF 2005

Shri Baban Dada Vadalik ... Appellant

V/s

Ajinkya Education Society, Satara. ... Respondent

Mr. Pankaj D. Das for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 21ST JUNE, 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the Ad-hoc Addl. District Judge, Satara dated 23.12.2004 dismissing the appeal and confirming the judgment and order passed by the Jt. Civil Judge, Jr.Divn., Satara dated 15.11.2003 decreeing the suit partly and directing the present appellant-defendant to remove the suit shed and hand over the vacant possession to the plaintiff within a particular time.

2. The plaintiff is a Trust who had filed the suit against the defendant who was said to be in service and thereby was occupying the suit shed as a permissive

user. As the defendant has refused to vacate the suit premises, the suit came to be filed.

The defendant challenged the suit on the ground that he is the owner of the suit shed by way of adverse possession. The learned Trial Judge proceeded to conclude that the defendant was permissive user of the suit shed and defendant failed to prove that he had perfected title by adverse possession. In the result, the suit came to be decreed partly.

3. The appeal was carried to the District Court, Satara. The learned Ad-hoc Addl. District Judge heard both sides and came to the conclusion that the findings recorded by the lower Court Judge were just, legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset, it may be noted that the only question sought to be raised in this appeal was that the suit was not filed with permission of the Charity Commissioner as the plaintiff was a Trust registered under the B.P.T. Act. However, the provision of Sec. 50 makes it clear that no such permission is necessary to file the suit against the licencee or a permissive

user and, therefore, the question sought to be raised cannot be considered as a substantial question of law. It was also sought to be argued that the evidence on record was not properly appreciated as the plea of adverse possession taken up by the defendant was not proved. However, it was the question of fact based on factual aspects of the evidence which are found to be appreciated by both the Courts below in proper and perspective manner.

5. In the result, there is no merit in the appeal and stands dismissed. Consequently, the Civil Application No. 682 of 2005 also stands dismissed.

(P.V. Kakade, J.)